

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6542 OF 2005

Bhagwan S/o Ganpat Mali,
Age : 38 Years, Occu. : Service,
Lecturer in Junior College,
Sant Muktabai Arts and Commerce
College, Muktainagar, Tq. Muktainagar,
District Jalgaon. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary
School Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Nasik Division, Nasik.
3. Vidyabharati Shaikshanik Mandal,
Amravati, through its President.
4. The Principal,
Sant Muktabai Arts and Commerce
College, Edalabad (Muktainagar),
Tq. Muktaingar, Dist. Jalgaon. .. Respondents

Shri S. R. Barlinge, Advocate for the Petitioner.

Shri M. B. Bharaswadkar, A.G.P. for Respondent Nos. 1 and 2.

Shri P. R. Patil, Advocate for Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

DATE : 02ND FEBRUARY, 2017.

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Mr. Barlinge, the learned counsel for the petitioner states that, the petitioner was appointed in the year 1993. Though the petitioner was officiating as full time lecturer in Economics and Commerce taking more than 24 lectures in a week, still initially approval was granted to the appointment of the petitioner on clock hour basis. At all material time work load of full time lecturer was available, but the approval was granted to the petitioner only on clock hour basis. Even salary grant was not given to the petitioner. Mr. Baviskar, who was junior to the petitioner has been granted approval as a full time lecturer from January 1998. The petitioner is senior to said Baviskar, who was teaching commerce and co-operation subjects.

2. The learned counsel further submits that, management always submitted proposal seeking approval to the appointment of the petitioner as full time lecturer, however, approval was granted only on clock hour basis. The learned counsel submits that, even on 12.06.1999, approval is rejected on the ground that, there is backlog of S.C. and S.T. category candidates. In the said order, it is shown that 26 lectures work load is available to the petitioner i. e. of full time lecturer. The petitioner belongs to O.B.C. Category. The management had also given undertaking that it would fill in backlog, still same was not considered. According to the learned counsel, subsequently approval was not

granted on the ground that, writ petition was pending. The learned counsel submits that, appointment orders on record would clearly show that work load is available.

3. Mr. Patil, the learned counsel for the institution accepts that, the petitioner was discharging the duties as a full time lecturer. Initially in the year 1993-1994 the approval was granted on clock hour basis. So also in the year 1996-1997 approval was granted on clock hour basis. One Mr. Baviskar who was earlier granted approval on clock hour basis was given full time approval on 19.08.1999. The learned counsel submits that, the petitioner was at all material time having work load of more than 24 clock hours. According to the learned counsel in the year 2005 the approval is rejected on the ground that, the petitioner was appointed as Shikshan Sevak. The petitioner was appointed on 08.09.1993. At that time policy of appointing Shikshan Sevak was not in vogue. The learned counsel submits that, even resolution is passed on 07.06.2002 stating that the petitioner is working from 1993 and he should be appointed as full time lecturer. The learned counsel submits that, the respondent No. 3 has given undertaking on 12.01.2003 that backlog will be removed and only two S.T. category backlog is to be filled in. Resultantly roster has been verified and there is backlog of three O.B.C. category candidates. The petitioner belongs to O.B.C. category.

4. The learned Assistant Government Pleader submits that, in the year 1999 approval to the appointment of the petitioner is rejected on the ground that there is backlog of S.C. and S.T. category candidates. The petitioner could not have been granted approval on the seat reserved for backward class candidate. The learned A. G. P. submits that, considering the work load available, the approval is granted on clock hour basis. No error has been committed while not granting approval to the petitioner on full time basis. Even appointment orders were not issued as Shikshan Sevak or on probation.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. It is not disputed that, the petitioner is continuously officiating his duties since the year 1993-1994. It is also not disputed by the respondents that, the petitioner is appointed after following due process of selection. The only dispute is with regard to that, the approval was granted to the petitioner on clock hour basis and not on full time basis. The learned counsel for the respondent/institute also accepts that one Mr. Baviskar was granted approval as full time lecturer and who is junior to the petitioner.

7. We have seen the order dated 19.08.1999 passed by the Deputy Director of Education, whereby the approval was refused to the petitioner. The approval was refused only on the ground that there is backlog of S.C., S.T. and S.B.C. category candidates. The said order itself reflects that the petitioner was having work load of 26 clock hours in a week. It is accepted by respondents that, a teacher having work load of 24 clock hours in a week is considered as a full time work load. The said order itself says that the petitioner had work load of 26 clock hours. The institution had also given undertaking that the backlog would be filled in and vacancy did exist at the relevant time.

8. Considering the aforesaid aspect of the matter, it would not be appropriate to treat the petitioner on clock hour basis, when he is discharging the duties of a full time lecturer. It is further now clear that, the backlog S.C., S.T. and S.B.C. category candidates is filled in and there is backlog of O.B.C. category candidates. The petitioner belongs to O.B.C. category. Considering the aforesaid conspectus of the matter, the impugned orders granting approval to the petitioner on clock hour basis issued after 1999 are quashed and set aside. The petitioner would be considered as full time lecturer with effect from academic year 1998-1999.

9. The writ petition is filed in the year 2005, as such the

salary to the petitioner shall be released as per the pay scale applicable from time to time to a full time lecturer with effect from academic year 2004-2005. As the petition is filed in the year 2005, we are not giving salary of a full time lecturer to the petitioner from academic year 1998-1999 and the same would be admissible to the petitioner from the year 2004-2005, however, for the purpose of retiral benefits and continuity in service of the petitioner, the petitioner shall be considered as full time lecturer from the academic year 1998-1999.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]